Supreme Court, U.S.
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No. ___ (1)

IN THE

Supreme Court of the United States

MIKAIL KHASHAN,
Petitioner,

v.

NINTH CIRCUIT COURT OF APPEALS,
Respondent.

On the petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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PETITION FOR A WRIT OF CERTIORARI

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April 28, 2004

QUESTIONS PRESENTED FOR REVIEW

1. May federal appellate judges determine the merits of an appeal, and dismiss it, without appeal briefs being filed?
2. Has the United States Supreme Court so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by the Ninth Circuit Court of Appeals, as to call for an exercise of this Court's supervisory power?
3. Did the Ninth Circuit Court of Appeals abuse its discretion dismissing petitioner appeal?
4. Has the Ninth Circuit Court of Appeals, in its actions, including a pattern of Civil Rights Violations, particularly Violation of Due Process of Law, acted improperly and abused its discretionary power, and with a lack of appropriate judicial clarity in improperly dismissing petitioner appeal so as to prejudice petitioner in his rights, or in his pursuit of justice?
5. Can Ninth Circuit Appeals Court demonstrate lack of jurisdiction over a well pleaded appeal resulted from a Final Order of District Court?
6. Has the Ninth Circuit Appeals Court, through its deliberate failure to consider appropriate and correct law and fact which were called to the court's attention, improperly dismissed the action of petitioner?
7. In its dismissal of the petitioner appeal, has the District Court violated petitioner rights, in fact:
    a.) under the First Amendment to petition the courts for redress of grievances?;
    b.) under the Fifth and Fourteenth Amendments to equal protection of the laws?;
    c.) under the Seventh Amendment to a trial by jury?

8. Can the defendant remove state action to federal jurisdiction when a plaintiff by a voluntary act interposes a federal question that did not appear in the complaint as originally filed?

9. Can federal judges remand an action to state court that is transferred by petitioner to federal jurisdiction based on counterclaim that states multiple federal causes of actions for which federal remedies are available?

    i. Violation of 18 U.S.C. 1692 RICO ACT;

    ii. Violation of 42 U.S.C. 1983;

    iii. Violation of 15 U.S.C. 1692;

    iv. Violation of 15 U.S.C. 1601;

    v. Violation of 11 U.S.C. 727;

    vi. Defamation;

    vii. Solicitation of Perjury;

    viii. Fraud.

10. Can federal court determine its own jurisdiction even if a party objects where there is counterclaim that states multiple federal causes of actions for which federal remedies are available?

PARTIES TO THE PROCEEDINGS

The parties to the questions presented here are the District Court of California, Central District; Ninth Circuit Court of Appeal; and the plaintiff, WFS Financial Services, Inc.

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CITATIONS OF DISTRICT COURT AND APPELLATE COURT DECISIONS

Ninth Circuit Court of Appeal in its order dated February 24, 2004 states as follows:

> Before: FERNANDEZ, W. FLETCHER and TALLMAN, *Circuit Judges*
>
> A review of the record demonstrates that this court lacks jurisdiction over this appeal because the order challenged in the appeal court is not reviewable. *See* 28 U.S.C. §1447 (d); *Kunzi v. Pan American World Airway, Inc.*, 833 F.2d 1291 (9th Cir. 1987)(order remanding for lack of federal jurisdiction is not reviewable).

Consequently, this appeal is dismissed for lack of jurisdiction.

JURISDICTIONAL STATEMENT

- This petition seeks review of the order dated February 24, 2004, and March 30, 2004, by the Ninth Circuit court of appeals that deprived Petitioner the due process right to file appeal briefs relating to the transfer of state action to federal jurisdiction under the Civil Rights Act, Bivens, Civil RICO.
- The refusal to address the multiple federal causes of actions under the RICO ACT, Truth and Lending Acts, and Federal Bankruptcy Laws.
- The appeal was of a final order for which the appellate court had mandatory jurisdiction under 28 U.S.C. §§ 1291.
- The jurisdiction of the district court for the multiple federal causes of actions for which relief was available arose under 28 U.S.C. §§ 1331 and 1343 in conjunction with the Civil Rights Act (42 U.S.C. §§ 1983-1986), Bivens, and RICO (42 U.S.C. §§ 1961-1965), Truth and Lending Acts of 15 U.S.C. §§ 1601 and 1692, and Bankruptcy Relief pursuant to 11 U.S.C. § 727.

This petition is timely: The district court entered its final order remanding case to the superior court of California on December 5, 2003, (See Appendix). Thereafter, district court denied petitioner's reconsideration on December 18, 2003, (*See* Appendix).

Furthermore, petitioner filed his Notice of Appeal with Ninth Circuit Court of Appeal on December 24, 2003. Shortly after, Ninth Circuit Appeal Court denied petitioner's appeal on February 24, 2004, (*See* appendix). Moreover, petitioner filed for reconsideration with Ninth Circuit on March 7, 2004, which was denied on March 30, 2004, (*See* Appendix).

Constitutional Provisions and Statutes Involved In the Case

First Amendment Right to petition the government for a redress of grievances.

Fifth Amendment Due process, equal protection, rights and privileges, property rights, the right not to be deprived of life, liberty, or property, without due process of law.

Fourteenth Amendment Due process, equal protection, and property rights.

Article V of the Bill of Rights Not to be deprived of life, liberty, or property, without due process of law.

Title 28 U.S.C. § 1331 The responsibility of federal judges to exercise jurisdiction and provide judicial remedy via actions arising under the Constitution and laws of the United States, giving all citizens the right to petitioner government for redress against great harm.

Title 28 U.S.C. § 1343 The due process right to recover damages for injury to person and property arising out of deprivation of massive numbers of substantive and procedural due process violations in conjunction with the Civil Rights Act and other law and constitutional rights stated in this petition.

28 U.S.C.A. § 1443 Against any person who is denied or cannot enforce in the courts of such State a right under any law providing for the equal civil rights of citizens of the United States, or of all persons within the jurisdiction thereof.

Title 42 U.S.C.§§ 1961~1265, RICO The right to obtain financial damages against those defendants engaging in a conspiracy, affecting interstate and international commerce, through multiple predicate acts.

Title 42 U.S.C. §§ 1983-1988 The right to obtain an injunction halting continuing major violations of civil and

constitutional substantive and procedural violations occurring in state courts, and for financial damages.

Bivens doctrine The right to obtain an injunction halting continuing major violations of civil and constitutional substantive and procedural violations occurring in federal courts, and for financial damages.

CA ST JUDICIAL ETHICS Canon 1 An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing high standards of conduct, and shall personally observe those standards so that the integrity and independence of the judiciary will be preserved.

CA ST JUDICIAL ETHICS Canon 3

A JUDGE SHALL PERFORM THE DUTIES OF JUDICIAL OFFICE IMPARTIALLY AND DILIGENTLY.

CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 170.1 (a)

A judge shall be disqualified if any one or more of the following is true: (6) For any reason; (c) a person aware of the facts might reasonably entertain a doubt that the judge would be able to be impartial. Bias or prejudice towards a lawyer in the proceeding may be grounds for disqualification.

CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 170.3

(b)(2) There shall be no waiver of disqualification where the basis therefore is either of the following:

(A) The judge has a bias or prejudice concerning a party. (c)(l) If a judge who should disqualify himself or herself refuses or fails to do so, *any party* may file with the clerk a written verified statement objecting to the hearing or trial before the judge and setting forth the facts constituting the

grounds for disqualification of the judge. The statement shall be presented at *the earliest practicable opportunity*

STATEMENT OF THE CASE

Supreme Court Rule 62A requires judges to conduct themselves "at all times in a manner that promotes public confidence in the integrity *and impartiality* of the judiciary."

The United States Supreme Court has also held that "[a] fair trial is a basic requirement of the due process"[1] Central to the concept of a fair trial is the principal that a judge shall apply the law impartially. Common law has recognized the importance of a judge's impartiality at least since the time of Sir Edward Coke, as reflected in the maxim that "no man shall be a judge in his own case,"[2] Since then, a body of law has developed to govern the standards and procedures by which a judge is to be disqualified from cases in which he has an interest or bias.[3]

Chronology leading to transfer action to federal court:

1. Defendant filed for Chapter 7, Bankruptcy, on March 22, 2001. In his petition, defendant named plaintiff, WFS Financial Services, Inc. ("plaintiff" or "WFS" as his creditor.

2. Plaintiff's claim alleges that Khashan for valuable consideration, made, executed and delivered to JIM

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[1] *In re Murchison*, 349 U.S. 133, 136 (1955); *see also Wong Yang Sung v. McGarth*, 339 U.S. 33, 50 (1950) (Constitution requires that hearings take place before an impartial tribunal); *Tumey v. Ohio*, 273 U.S. 510, 512 1926)("A trial before a tribunal financially interested in the decision constitutes a denial of due process. . .)

[2] "(A)liquis non debit case Judex in properia cause. . .:Dr. Bonham's Case, 77 Eng.Rep. 646, 652 (1609).

[3] For an examination of the development of judicial disqualification law, *see* Frank, Disqualification of Judges, 56 YALE L.J. 605, 609-26 (1947).

ALLEN MOTORS a written Motor Vehicle Contract and Security Agreement. Plaintiff claims that the defendant defaulted in the terms, conditions and covenant of the Contract by failing and refusing to make the monthly payment then due and owing.

3. On July 15, 2000, petitioner purchased a 1998 BMW 740IL, from EURO AMERICA MOTORS ("EURO"), not Jim Allen Motors as defendant contends.

4. At the time petitioner signed the agreement with EURO, he agreed to purchase the vehicle for the cash value of $34,500.00. KHASHAN then gave $6,000.00 down payment to EURO. Furthermore, petitioner agreed to make a monthly payment of $796.88 for the terms of 48 months or four (4) years.

5. Plaintiff and its agents without knowledge and consent of defendant had altered the terms of the agreement to bear a lower monthly payment of $756.88 but for a longer period of 60 month or five (5) years. A difference of $7,202.56 which defendant would have suffered for the benefit of the plaintiff, WFS Financial Services, Inc.

6. Thereafter, plaintiff attempted to serve defendant with a copy of the summons and complaint. The services of the complaint was defective and not in compliance with California Civil Procedure §416.60 through §416.90.

7. Plaintiff's process server, Delbert Salgado ("Salgado"), on April 30, 2002, prepared and filed with the state court a declaration of service of summons, under penalty of perjury stating the he had served defendant's spouse at her resident.

8. The fact is that plaintiff's process server had spoken to defendant's *sister*, Linda Khashan, ("Linda") and he never identified himself to be a process server who was on an official business attempting to serve a summons and complaint on defendant. Defendant's sister found the demeanor and behavior of the unknown individual to be peculiar and nervous and informed the individual she would contact the police if he did not leave the premises. Shortly thereafter, when Linda departed her house, she discovered a summons and complaint on the front porch of her house. It is not known that the summons was left on the front porch by the estranged individual or by someone else.

9. Defendant timely filed a Motion to Quash Service of Summons on May 13, 2002. Defendant attached all supporting documents including Linda's affidavit deposing to the entire conversation she had with estranged individual.

10. Plaintiff's process server with the assistance of plaintiff's attorneys upon learning of the fact in the case by reading defendant's Motion to Quash Service of Summons, coached the process server by soliciting perjury to sign a second affidavit of service in contradiction of his first affidavit to include that he had conversation with defendant's *sister* and that he had personally hand delivered a copy of summons and complaint to petitioner's sister. This act of process server was an intent to deceit and mislead the court and defendant and for the benefit of the plaintiff and its attorneys.

11. On June 13, 2002, the hearing came before Judge Alan G. Buckner who agreed with defendant that the conducts of process server, Salgado, was not honest and his affidavit of service filed with the court

was false and fabricated, but denied the motion without legal justification, on bad cause, and on bogus grounds.

12. Defendant timely filed a Notice of Appeal with the Appellate Court, Second District, on June 21, 2002.

13. Appellate Court requires that appellant to file a Case Information Statement upon filing an appeal. Case Information Statement requires appellant to accompany a copy of the order appealing that is signed by the judge issuing the order.

14. Defendant, on July 31, 2002, requested the lower court in writing for a signed order denying his motion to quash service of summons in an effort to complete his Case Information Statement.

15. Judge Alan G. Buckner, in an attempt to prevent the defendant from having his day before the appellate court, in retaliation and abuse of his authority refused to sign an order justifying his own ruling denying defendant's motion to quash service of summons.

16. Defendant's appeal was dismissed by Second Appellate Court for failure to file a completed Case Information Statement on July 31, 2002.

17. Thereafter, defendant timely filed a Motion for an Order for Change of Venue on July 12, 2002. The hearing was scheduled by the clerk of the court for September 12, 2002, pursuant to California Rules of Court, *Rule 2.0(e)* which states all Venue hearings must be scheduled in Department 1, of Central District.

18. Judge Alan G. Buckner in an attempt to retaliate and to intimidate defendant and in violation of *California Rules of Court, Rule 2.0(e)* ordered the petitioner to

reschedule the hearing for September 5, 2002, to be heard in his courtroom.

19. Defendant filed Notice of Continuance of Hearing in compliance with the court order, on August 1, 2002.

20. Since defendant had doubt in the integrity and impartiality of the lower court's corrupt motives and intentions, on July 27, 2002, pursuant to California Rules of Court, Rule 303, defendant timely and appropriately withdrew his previously Motion for an Order for change of Venue, and replaced it with a Motion for an Order to Transfer Action from Central District, where judge Alan G. Buckner was presiding to San Fernando District where defendant resided; another polite and courteous way to inform judge Alan G. Buckner to stop his personal vendetta against the defendant.

21. Defendant as is today was also representing himself on all state proceedings. Having observed dishonesty and ingenuity in the dignity and honor of the court and its scandalous officers (attorneys for plaintiff) to protect himself from any surprises, on July 27, 2002, petitioner mailed a letter to plaintiff's attorneys demanding that all future communication with defendant must be in writing. There was no hearing scheduled for this demand.

22. On September 7, 2002, defendant received a Notice of Ruling, regarding previously withdrawn and off calendared Motion for an Order for Change of Venue. Alan G. Buckner without notifying the appellant had continued previously withdrawn motion and denied it in the absence of the defendant without having jurisdiction. On the same day, Alan G. Buckner additionally issued another ruling in a matter that was neither scheduled for hearing nor judicially noticed.

The ruling states that defendant's Demand for Communications in Writing is also denied.

23. On September 10, 2002, defendant filed a demand for court to vacate its bias, prejudicial, discriminatory and illegal rulings on subjects that court had no authority to rule on in the absence of the defendant.

24. Defendant making every effort to have his case heard before an impartial and dignified judge other than Alan G. Buckner, having become frustrated of judge's retaliatory techniques, and abuse of his authority, filed a declaration of prejudice pursuant to *California Civil Procedure §170.6,* on September 10, 2002.

25. Concurrently, defendant filed a Demand for Hearing for Disqualification of Judge Alan G. Buckner in accordance with *California Civil procedure* §170.3(4)(c)(1).

26. On or about September 29, 2002, defendant received three (3) orders signed by Judge Alan G. Buckner striking defendant's every motion that was filed in violation of judge's judicial performance. Judge refusing to recuse himself, striking every motion he has no judicial authority to strike! What a mockery of the American Justice System!

27. Defendant having exhausted every available option to get his day in a fair state court after being denied his constitutional rights to due process of law, having been violated by the lower court, by plaintiff and its scandalous attorneys and their process server, transferred the state action to federal jurisdiction on October 7, 2002.

28. The district court on December 6, 2002 in its order granting plaintiff's motion to remand.

29. On December 13, 2002, defendant filed his appeal to the Ninth Circuit which was denied.

30. Defendant subsequently prepared his counterclaim and filed it with the district court, on December 3, 2003.

31. On December 5, 2003, only two days after the filing of his transfer and counterclaim district court on its own motion denied defendant's access to the justice system and remanded action to state court. District court citing: *Rains v. Criterion Systems, Inc.*, 80 F.3d 339 (9th Cir. 1996), claims that *"A federal court must determine its own jurisdiction even if neither party objects to it."*

32. On December 18, 2003, petitioner's request for reconsideration was denied by district court.

33. On December 24, 2003, petitioner filed his appeal to the ninth circuit court. Only two days prior to filing petitioner's opening brief, ninth circuit dismissed petitioner's appeal citing *"A review of the record demonstrates that this court lacks jurisdiction over this appeal because the order challenged in the appeal is not reviewable. See* 28 U.S.C. §1447(d); *Kunzi v. Pan American World Airway, Inc.*, 833 F.2d 1291 (9th Cir. 1987)*(order remanding for lack of federal jurisdiction is not reviewable). Consequently, this appeal is dismissed for lack of jurisdiction".*

34. On March 30, 2004, ninth circuit denied petitioner's request for reconsideration.

Now petitioner looks into this court for some justice in pursuit of rightfulness in American legal system!

42 USCA § 1983

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the

District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia. Conduct by persons acting under color of state law which is wrongful under § 1983 cannot be immunized by state law. *Hodgson v. Mississippi Dept. of Corrections*, E.D.Wis.1997, 963 F.Supp. 776. Federal civil rights statute was designed to deter state actors from using their authority to deprive individuals of their federally guaranteed rights and to provide relief to victims if deterrence failed. *Bosley v. Kearney R-1 School Dist.*, W.D.Mo.1995, 904 F.Supp. 1006, affirmed 140 F.3d 776, rehearing and suggestion for rehearing en banc denied. Whether certain conduct is "under color of state law" or "state action," for purposes of § 1983 and Fourteenth Amendment, is a question of federal, not state law. *Gorenc v. Salt River Project Agr. Imp. and Power Dist.*, C.A.9 (Ariz.) 1989, 869 F.2d 503, certiorari denied 110 S.Ct. 256, 493 U.S. 899, 107 L.Ed.2d 205. Doctrine of judicial immunity does not shield judge from injunctive relief in civil rights suit under § 1983. *Holeman v. Elliott*, S.D.Tex.1990, 732 F.Supp. 726, affirmed 927 F.2d 601, certiorari denied 112 S.Ct. 59, 502 U.S. 812, 116 L.Ed.2d 35. Purpose of § 1983 is to deter state actors from using badge of their authority to deprive individuals of their federally guaranteed rights and to provide relief to victims if such deterrence fails. *Wyatt v. Cole*, U.S.Miss.1992, 112 S.Ct. 1827, 504 U.S. 158, 118 L.Ed.2d

504, on remand 994 F.2d 1113; *Reuben H. Donnelley Corp. v. Brauer, Ill.App.* 1 Dist.1995, 655 N.E.2d 1162, 211 Ill.Dec. 779, 275 Ill.App.3d 300. Deterrence of future abuses of power by persons acting under color of state law is an important purpose of this section. *City of Newport v. Fact Concerts, Inc.*, U.S.R.I.1981, 101 S.Ct. 2748, 453 U.S. 247, 69 L.Ed.2d 616. Purpose of § 1983 is to provide a remedy to parties deprived of constitutional rights by a state official's abuse of his position while acting under color of state law. *Haines v. Fisher*, C.A.10 (Wyo.) 1996, 82 F.3d 1503. Seeking an injunction and financial damages against judicial and non-judicial defendants for great and irreparable personal and financial harm. These federal offenses include repeated violations of record numbers of state and federal substantive and procedural due process laws and constitutional protections, perpetrated under color of state law, while lacking personal jurisdiction.

28 U.S.C.A. § 1443

Any of the following civil actions or criminal prosecutions, commenced in a State court may be removed by the defendant to the district court of the United States for the district and division embracing the place wherein it is pending:

(1) Against any person who is denied or cannot enforce in the courts of such State a right under any law providing for the equal civil rights of citizens of the United States, or of all persons within the jurisdiction thereof;

(2) For any act under color of authority derived from any law providing for equal rights, or for refusing to do any act on the ground that it would be inconsistent with such law.

This section providing for removal of civil rights action from state court to federal district court only applies to

removal of action originally instituted in state court. *Boyce v. School Dist. of Philadelphia*, E.D.Pa.1978, 447 F.Supp. 357.

28 USCA § 1343

a) The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

(1) To recover damages for injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section 1985 of Title 42;

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;

(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote.

Federal district court had jurisdiction, under this section establishing original jurisdiction in district courts of any civil action to redress deprivation of any constitutional right under color of state law, to grant monetary and equitable relief requested, regardless of amount in controversy. *Lopez v. White Plains Housing Authority*, S.D.N.Y.1972, 355 F.Supp. 1016. Federal courts have jurisdiction to hear claims of alleged deprivations of procedural due process rights. *Johnston v. Shaw*, N.D.Tex.1982, 556 F.Supp. 406. The right to due process of law was guaranteed not only to citizens but to any person, and the remedy for deprivation of such right was provided by former § 41(14) of this title, and jurisdiction over the enforcement of such rights was given the federal

district courts by said section. *United Elec., Radio & Mach. Workers of America, CIO, v. Baldwin*, D.C.Conn.1946, 67 F.Supp. 235. Civil rights statute and its jurisdictional counterpart authorize federal courts to entertain suits to redress deprivations, under color of state law, of constitutional rights. *Hagans v. Lavine*, U.S.N.Y.1974, 94 S.Ct. 1372, 415 U.S. 528, 39 L.Ed.2d 577, on remand 505 F.2d 727. Right to present a defense is one of minimum essentials of fair trial. *U.S. v. Burge*, C.A.6 (Mich.) 1992, 990 F.2d 244, certiorari denied 113 S.Ct. 2379, 508 U.S. 924, 124 L.Ed.2d 283. Fundamental element of due process of law is right of defendant to present defense. *Purohit v. State*, Md.App.1994, 638 A.2d 1206, 99 Md.App. 566, certiorari denied 646 A.2d 364, 335 Md. 698.

28 U.S.C.A. § 1441

(a) Except as otherwise expressly provided by Act of Congress, any civil action brought in a state court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or defendants, to the district court of the United States for the district and division embracing the place where such action is pending. . . .

Acts of Congress authorizing the removal of causes are constitutional. *Home Life Ins. Co. of Brooklyn v. Dunn*, U.S.Ohio 1873, 86 U.S. 214, 22 L.Ed. 68, 19 Wall. 214. *See, also, Ames v. Kansas*, Kan. 1884, 4 S.Ct. 437, 111 U.S. 449, 28 L.Ed. 482; *Fisk v. Union Pac. R. Co.*, C.C.N.Y.1869, Fed.Cas. No. 4,827. The Supreme Court by uniformly construing provisions of former §71 of this title authorizing federal court by necessary implication had held such provision to be constitutional. *Texas Emp. Ins. Assn' v. Felt*, C.C.A.5 (Tex.)1945, 150 F.2d 227. Federal law governs construction of removal statutes. *Jones v. Roadway Exp., Inc.*, C.A.5 (Tex.) 1991, 931 F.2d 1086. Whether a civil action is removable and has properly removed is one for consideration

of the federal court and is not controlled by state law. *Stoll v. Hawkeye Cas. Co. of Des Moines*, Ipwa, C.A.8 (S.D.) 1950, 185 F.2d 96.

District court granted plaintiff's motion to remand by relying on the following:

> *"The plaintiff's complaint asserted five causes of action, all of which are firmly grounded in state law. The complaint did not raise a federal question which would grant original subject matter jurisdiction to this court. (see page 5, ¶ 2, line 9 of order granting the plaintiff's motion to remand)"* Federal courts should not look to state court classifications of parties or characterization of actions in determining whether removal is proper under federal law. *Ford Motors Credit Co. v. Liles*, W.D.Okla. 1975, 399 F.Supp. 1282. Questions concerning removal of cases to federal court are to be resolved in light of federal law. *Prini Corp. v. Orion Ins. Co.*, E.D.Cal.1971, 331 F.Supp. 453.

WHEN A PLAINTIFF BY A VOLUNTARY ACT INTERPOSES A FEDERAL QUESTION THAT *DID NOT* APPEAR IN THE COMPLAINT AS ORIGINALLY FILED, THE DEFENDANT MAY REMOVE THE CASE TO FEDERAL COURT. *Federal Deposit Ins. V. Otero*, C.A.1 (Puerto Rico) 1979, 598 F.2d 627; 28 U.S.C.A. § 1146(b). If case becomes removable during or even near end of state court trial, defendant may still exercise his rights to remove to federal court. *Johnson v. Celotex.*, D.Md. 1988. 701 F.Supp. 553.

35. Plaintiff's attorneys, Prenovost, Normandin, Bergh & Dawe, through Thomas J. Prenovost, Jr. and Gregory S. Masler, counselors at law, for the benefit of plaintiff and disregard of defendant's constitutional rights under due process and civil right acts, during state judicial process have committed illegal acts by coaching witness and soliciting perjury, acts contrary

> to the ethical and professional conducts that plaintiff's attorneys owe defendant. In addition state judge, the co-conspirator, who was made aware of those despicable acts, chose to do nothing, but rather impede justice and abused his authorities to punish the defendant by making illegal rulings on matters that were judicially and appropriately taken off-calendar and also, in the absent of the appellant, ruled on subjects that were not made motion properly to give the defendant an opportunity to oppose and to be heard. If the federal court did not have original jurisdiction over the subject matter as district judge contends, the federal court inherited such right by the wrongful actions of the plaintiff's attorneys, the state judge, and other third parties during the state judicial process. Civil rights statute and its jurisdictional counterpart authorize federal courts to entertain suits to redress deprivations, under color of state law, of constitutional rights. *Hagans v. Lavine*, U.S.N.Y.1974, 94 S.Ct. 1372, 415 U.S. 528, 39 L.Ed.2d 577, on remand 505 F.2d 727. Jurisdiction of claim against county officials for conspiring to deprive plaintiff of fair trial and due process of law was correctly asserted under this section conferring upon federal district courts original jurisdiction of certain civil rights actions. *Cross v. Board of Sup'rs of San Mateo County*, N.D.Cal.1968, 326 F.Supp. 634, affirmed 442 F.2d 362.

Our legal system is based on the principle that an independent, fair, and competent judiciary will interpret and apply the laws that govern us. The role of the judiciary is central to American concepts of justice and the rule of law. Intrinsic to this code are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to enhance and maintain confidence in our legal system. The judge is an arbiter of facts and law

for the resolution of disputes and a highly visible member of government under the rule of law.

CA ST JUDICIAL ETHICS Canon 1

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing high standards of conduct, and shall personally observe those standards so that the integrity and independence of the judiciary will be preserved. The provisions of this Code are to be construed and applied to further that objective. A judicial decision or administrative act later determined to be incorrect legally is not itself a violation of this Code. Deference to the judgments and rulings of courts depends upon public confidence in the integrity and independence of judges. The integrity and independence of judges depend in turn upon their acting without fear or favor. Although judges should be independent, they must comply with the law and the provisions of this Code. Public confidence in the impartiality of the judiciary is maintained by the adherence of each judge to this responsibility. Conversely, violations of this Code diminish public confidence in the judiciary and thereby do injury to the system of government under law. The basic function of an independent and honorable judiciary is to maintain the utmost integrity in decision making, and this Code should be read and interpreted with that function in mind. Although canons of code of judicial conduct do not have force of law or regulation, they reflect judicial consensus regarding appropriate behavior for judges and failure of judge to comply with canons suggests performance below minimum level necessary to maintain public confidence in administration of justice. *Adams v. Commission on Judicial Performance* (1994) 34 Cal.Rptr.2d 641, 8 Cal.4th 630, 882 P.2d 358.

CA ST JUDICIAL ETHICS Canon 3

A JUDGE SHALL PERFORM THE DUTIES OF JUDICIAL OFFICE IMPARTIALLY AND DILIGENTLY!

A. Judicial Duties in General. All of the judicial duties prescribed by law shall take precedence over all other activities of every judge. In the performance of these duties, the following standards apply.

B. Adjudicative Responsibilities (1) A judge shall hear and decide all matters assigned to the judge except those in which he or she is disqualified. Protection against any actual prejudice arising out of conduct by trial judge of preliminary hearing lies in utilization of existing means of challenging perceived bias or other lack of fairness of trial judge; judge who feels he or she is biased has obligation not to preside over proceedings, and if counsel conclude trial judge is for any reason biased, they may avail themselves of remedies for disqualification of judges. *People v. DeJesus* (App. 2 Dist. 1995) 44 Cal.Rptr.2d 796, 38 Cal.App.4th 1, rehearing denied, review denied.

CALIFORNIA CODE OF CIVIL PROCEDURE §170.6

(2) Where the judge, other than a judge assigned to the case for all purposes, court *commissioner*, or referee assigned to or who is scheduled to try the case or hear the matter is known at least 10 days before the date set for trial or hearing, the motion shall be made at least five days before that date.

Defendant has judicially and timely complied with every procedure to protect, enforce, and to prosecute and to defend his judicially guaranteed *rights* to a fair trial. The court and its officials have made every effort to deny defendant of his constitutional rights under California and The United States Laws and in violation of his civil rights and violation of due process and for bogus cause and in retaliation and to

intimidate him from enforcing his guaranteed rights to a fair trial.

District court in an effort to impede justice, only after two days of filing of petitioner's counterclaim remanded action to state court where a corrupt judge, Alan G, Buckner will get to rule on his own defense as he has done over and over and over. A judge protecting another one in the name of justice, fairness and judicial performance! So when is the petitioner going to get a fair shake of the American Legal System?

ARGUMENT FOR GRANTING THE WRIT

The review of the lower court's final decision in Supreme Court of the United States is not a matter of right but of judicial discretion. This cannot be said about Ninth Circuit Court of Appeal. The ninth circuit cannot choose and pick its own cases. Ninth Circuit cannot easily by citing its own case laws try to get out of its judicial responsibilities. Every appeal that is filed in the ninth circuit court must be given the same degree of importance and attention. The ninth circuit court of appeals refused to provide petitioner the due process right to file appeal briefs. In its ruling appellate court stated that it *". . . .lacks jurisdiction over this appeal"*. By its acts, ninth circuit approved the obstruction of justice committed by the district court. These corrupt acts only assisted plaintiff, its scandalous attorneys and their agents and the corrupt state court judge.

Where one court determines that plaintiff's well pleaded complaint did not have any federal questions, another decides not to look at the merit of the case and dismisses it without any justification. On the other hand defendant contends that plaintiff and other third parties associated with them by their own actions have created a federal question which would make a state court transferable to federal jurisdiction. The conduct of the process server, the solicitation of perjury of plaintiff's attorneys, the judge of state court misconducts and

favoring plaintiff over defendant for being of different class of citizen, or color of skin and nationality who happens to represent himself in this proceedings all of those amounts to violation of due process of law and civil rights under the United States Constitution. This court must remember the following while looking at the events in this action: WHEN A PLAINTIFF BY A VOLUNTARY ACT INTERPOSES A FEDERAL QUESTION THAT *DID NOT* APPEAR IN THE COMPLAINT AS ORIGINALLY FILED, THE DEFENDANT MAY REMOVE THE CASE TO FEDERAL COURT. *Federal Deposit Ins. V. Otero*, C.A.1 (Puerto Rico) 1979, 598 F.2d 627; 28 U.S.C.A. § 1146(b). If case becomes removable during or even near end of state court trial, defendant may still exercise his rights to remove to federal court. *Johnson v. Celotex., D.Md.* 1988. 701 F.Supp. 553.

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted,

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